

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE MONTANA TAXPAYERS  
7           ASSOCIATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12           of Political Practices (Commissioner) to consider the appeal of the principal  
13           referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,  
14           the principal appealed the Commissioner's assessment of a civil penalty resulting  
15           from its late filing of a lobbying disclosure report. The principal filed a written  
16           Waiver of Hearing waiving its right to an in-person hearing, and submitted a written  
17           statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19           Commissioner's file, and the applicable law, the Commissioner makes the following  
20           findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. The Montana Taxpayers Association is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
25           it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
26           at § 5-7-306, MCA, establishes civil penalties that are required to be assessed  
27           against any person who fails to file lobbying disclosure reports within the time  
              required by law.

1       3. The post-Session 2007 lobbying disclosure report for the Montana Taxpayers  
2 Association was required to be filed no later than May 29, 2007.

3       4. On May 16, 2007 the office of the Commissioner sent an email to all  
4 principals, including the Montana Taxpayers Association. The email advised  
5 principals that a post-Session 2007 lobbying financial disclosure report was required  
6 to be filed by May 29, 2007. The email referenced the appropriate form that was  
7 required to be filed, known as a form L-5A, and noted that it was available for  
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),  
9 MCA, the email stated: "A report must be filed in this office even though neither  
10 lobbying nor incurring of lobbying expenses may have occurred."

11       5. The Montana Taxpayers Association failed to file its L-5A on or before May  
12 29, 2007.

13       6. On May 30, 2007, the Commissioner sent a letter to Mary Whittinghill stating  
14 that the post-Session L-5A report was due May 29, 2007, but had not been received.  
15 The letter stated that a civil penalty started being assessed on May 30, 2007, at \$50  
16 per day, and would continue until the report was filed or until the penalty amount  
17 reached \$2,500. The letter urged the principal to fax the delinquent report  
18 immediately, followed by a hard copy.

19       7. On May 30, 2007, the principal filed its report. Because the report was filed  
20 one business days late, a \$50 civil penalty was assessed.

21       8. The Montana Taxpayers Association requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on August 9, 2007. The Montana Taxpayers Association filed a written  
24 Waiver of Hearing and submitted a written statement for the Commissioner's  
25 consideration.

26       9. In a written statement Mary Whittinghill asked on behalf of the Montana  
27 Taxpayers Association that the penalty be waived because she was struck by illness

1 just prior to the reporting deadline and was unable to deliver the report until  
2 Wednesday, May 30.

### 3 CONCLUSIONS OF LAW

4 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604  
5 and 5-7-306, MCA.

6 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

7 3. § 5-7-306, MCA, provides:

8 **Civil penalties for delays in filing -- option for hearing --**

9 **suspension of penalty.** (1) In addition to any other penalties or  
10 remedies established by this chapter, a person who fails to file a report  
11 within the time required by this chapter is subject to a civil penalty of  
\$50 for each working day that the report is late until the report is filed  
or until the penalties reach a maximum of \$2,500 for each late report.

12 The person against whom a penalty is assessed may request an informal contested  
13 case hearing before the Commissioner. At the hearing, the Commissioner is required  
14 to consider any factors or circumstances in mitigation, and may reduce or waive the  
15 civil penalty. § 5-7-306(3), MCA.

16 4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the  
17 Commissioner “no later than 30 days following adjournment of a Legislative  
18 Session,” and the report must include “all payments made during the session, except  
19 as previously reported.” § 5-7-208(4), MCA.

### 20 MEMORANDUM OPINION

21 Information offered in a written statement by Mary Whittinghill is compelling.  
22 She stated that filing the report late was a result of serious illness just prior to the  
23 reporting deadline, leading me to conclude that a reduced civil penalty is appropriate  
24 in this case. However, I urge principals to carefully review and understand the  
25 statutory filing requirements to ensure that they comply with the law and to avoid  
26 the assessment of civil penalties in the future.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Montana Taxpayers Association shall pay a reduced civil penalty of \$25 to this office no later than September 28, 2007.

DATED this 30<sup>th</sup> day of August, 2007.



Dennis Unsworth  
Commissioner of Political Practices

**NOTICE:** This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-4-701 through 2-4-711.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Mary Whittinghill  
Montana Taxpayers Association  
506 N. Lamborn  
Helena MT 59601

DATED: August 30th, 2007

Mary Baker  
Program Supervisor